

Appl. No. 09/764,560
Attr. Docket No. 8392
Amdt. dated November 10, 2004
Reply to Office Action of August 10, 2004
Customer No. 27752

REMARKS

Claims 1-6 and 10-32 are pending in this application. Claims 4, 5, 10, 17, 27, 28, 31 and 32 have been canceled in previous actions.

It is believed the previous amendments or changes do not involve introduction of any new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Double Patenting Rejection

Claims 1-3, 6, 11-16, 18-26 and 29-30 are rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over Claims 1-18 of US Patent 6,544,499 in view of Zysman et al (US 5,362,494) and claims 1-19 of US Patent 6,703,007 in view of Zysman et al (US 5,362,494). Applicants respectfully submit that a timely filed Terminal Disclaimer over these common owned patents would overcome the rejection.

Responsive to this rejection, a Terminal Disclosure under 37 C.F.R. 1.321(c) for the above-entitled patents which specifies that the Petitioner disclaims the terminal part of the statutory term of any patent granted on the instant application, which specifies that the Petitioner disclaims the terminal part of the statutory term of any patent granted on the above entitled application which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §154 to §156 and §173 as shortened by any terminal disclaimer filed prior to the grant of any patent granted on US Patent 6,544,499 and US Patent 6,703,007. Submission of the Terminal Disclaimer thus obviates the obviousness-type double patenting. Applicants confirm that the US Patent 6,544,499 and US Patent 6,703,007 were assigned to the Procter & Gamble Company/ and commonly owned at the time of the invention and is reflected in the assignment record for US Patent 6,544,499 (the assignment recorded on February 3, 2003 at reel 013412, frame 0340), and US Patent 6,703,007 (the assignment recorded on January 12, 2004 at reel 014252, frame 0793).

Claims 1-3, 6, 11-16, 18-26 and 29-30 are directed to an invention not patentably distinct from claims 1-18 of commonly assigned US 6,544,499 or claims 1-19 of commonly assigned US 6,703,007. The Examiner has stated that in order for the Examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time of the invention of this application was made, or name the prior inventor of the conflicting subject matter.

Applicants respectfully submit that commonly assigned US Patent 6,544,499 and US 6,703,007 were commonly owned at the time the invention in this application was made. Applicants provide the recordation of assignments for each of the applications as follows:

Appl. No. 09/764,560
Atty. Docket No. 8392
Amdt. dated November 10, 2004
Reply to Office Action of August 10, 2004
Customer No. 27752

US Patent 6,544,499 - Assignment recorded on February 3, 2003 at reel 013412, frame 0340; and
US Patent 6,703,007 - Assignment recorded on January 12, 2004 at reel 014252, frame 0793; and
pending application 09/764,560 - Assignment recorded on April 25, 2002 at reel 012627, frame
0181.

Rejection Under 35 USC §103(a) Over U.S. Patent No. 6,544,499 and U.S. Patent No.
6,703,007

Claims 1-3, 6, 11-16, 18-26, and 29-30 have been rejected as being obvious over
U.S. Patent No. 6,544,499 and U.S. Patent No. 6,703,007.

The Examiner has stated that, for applications filed on or after November 29, 1999, this
rejection may be overcome by a showing either showing that the conflicting inventions were
commonly owned by the same person or subject to an obligation of assignment to the same person.

Applicants respectfully submit that commonly assigned US Patent 6,544,499 and US
6,703,007 were commonly owned at the time the invention in this application was made.
Applicants provide the recordation of assignments for each of the applications as follows:

US Patent 6,544,499 - Assignment recorded on February 3, 2003 at reel 013412, frame 0340; and
US Patent 6,703,007 - Assignment recorded on January 12, 2004 at reel 014252, frame 0793; and
pending application 09/764,560 - Assignment recorded on April 25, 2002 at reel 012627, frame
0181. A Terminal Disclaimer is also enclosed.

Conclusions

Early and favorable action in this application is respectfully requested in view of the above
remarks and terminal disclaimer.

Respectfully submitted,

R.W. Glenn Jr. et al

By Linda M. Sivik
Linda M. Sivik
Agent for Applicants
Registration No. 44,982
(513) 626-4122

November 10, 2004

Customer No. 27752